

## REMARKS

In an Office Action mailed on February 3, 2005, claims 39, 41, 43, 45, 47, 49, 51, 53 and 55 were rejected under 35 U.S.C. § 102(e) as being anticipated by Thro; and claims 40, 42, 44, 46, 48, 50, 52, 54 and 56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thro. The §§ 102 and 103 rejections are discussed below.

### Rejections of Claims 39-44:

The method of independent claim 39 includes receiving in a driver program that is executed by a computer a first request and a second request. The first request is generated by an application program that is executed by the computer for a frame rate, and the second request is generated by the application program for a resolution. The first and second requests are associated with communication between a camera and the computer. The method includes using the driver program to evaluate a bandwidth that is available for the communication between the camera and the computer. Furthermore, the driver program is used to comply with the first request and based on the evaluation of the available bandwidth, selectively no comply with the second request.

In the § 102 rejection of claim 39, the Examiner refers to the Abstract of Thro to allegedly teach the act of receiving of independent claim 39. However, the Abstract merely refers to a "computer program" that is executed "to determine a priority between transmission frame rate and resolution per frame." Thro does not, however, label the "computer program," as an "application program" or a "driver program." Rather, Thro merely recites that the computer program determines a priority between a transmission frame rate and a resolution per frame.

Independent claim 39 specifically sets forth receiving *in a driver program a first request and a second request (emphasis added)*. Thro neither distinguishes between application and driver programs nor teaches or even suggests receiving the first and second requests in a driver program, as specifically set forth in independent claim 39. As such, for at least any of these reasons, Thro fails to anticipate independent claim 39.

Claims 40-44 are patentable for at least the reason that these claims depend from an allowable independent claim. However, these claims are patentable for additional, independent reasons. For example, in the § 103 rejection of claim 40, the Examiner concedes that Thro fails to specifically disclose "intermittently checking the available bandwidth and determining

whether the comply with the second request (resolution) to accommodate changes in the bandwidth." Office Action, 4. The Examiner bases the conclusion of obviousness on Thro's alleged teaching of receiving video information intermittently. However, even assuming, for purposes of argument, that Thro does provide such a teaching, claim 40 set forth a use of the driver program to comply with a specific request, not different communications with the video device.

A *prima facie* case of obviousness requires that the prior art teach or suggest all claim limitations. For at least the reason that the Examiner fails to show where all claim limitations are taught or suggested in the prior art, the Examiner has failed to establish a *prima facie* case of obviousness for claim 40. As such, for at least this additional, independent reason, withdrawal of the § 103(a) rejection of claim 40 is requested.

The Examiner rejects claim 42 under 35 U.S.C. § 103(a) but concedes, "Thro et al. does not specifically disclose submitting the communication requests for large bandwidths until the bus interface denies one of the communication requests." Office Action, 4. The Examiner takes Official Notice that is allegedly well known for a communication system to deny communication requests based on bandwidth constraints. *Id.*

Even if, for purposes of argument, the Examiner's Official Notice recognizes a well known teaching, such a teaching still does not render claim 42 obvious. In other words, claim 42 specifically sets forth submitting communication requests until a bus interface denies one of the communication requests so that bus requests may be progressively used to request more bandwidth. Therefore, the Examiner has not addressed the specific limitations of claim 42 and fails to show where the prior art teaches or suggests all of these limitations.

Additionally, a *prima facie* case of obviousness has not been set forth for independent claim 42 for at least the additional, independent reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Thro to derive the missing claim limitations. M.P.E.P. § 2143.

Furthermore, Applicant challenges the Official Notice and requests the Examiner to show where the prior art allegedly discloses denying communication requests based on bandwidth constraints. M.P.E.P. § 2144.03.

Regarding the § 103(a) rejection of claim 44, the Examiner takes Official Notice that a camera that includes a scaling capability is well known in the art. Office Action, 5. The

Examiner, although conceding that Thro fails to specifically disclose adjusting the resolution based at least in part on a determination of a scaling capability of the camera, uses the alleged Official Notice to derive a case of obviousness for claim 44. However, the Examiner fails to establish a *prima facie* case of obviousness for claim 44 for at least the reason that the Examiner fails to show where the prior art teaches or suggests all claim limitations. In this regard, the Examiner fails to show where the prior art teaches or suggests adjusting a resolution includes determining a scaling capability of a camera. This act is distinct from the mere recognition that cameras may have scaling features. Furthermore, a *prima facie* case of obviousness for claim 44 has not been established for at least the additional, independent reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Thro to derive the claimed invention. M.P.E.P. § 2143. Therefore, for at least any of these reasons, a *prima facie* case of obviousness has not been set forth for claim 44.

Thus, in view of the discussion above, withdrawal of the §§ 102 and 103 rejections of claims 39-44 is requested.

#### §§ 102 and 103 Rejections of Claims 45-50:

The article of independent claim 45 includes a computer accessible storage medium that stores instructions to, when executed, cause a processor-based system to receive a first request that is generated by an application program that is executed by the processor-based system for a frame rate and a second request that is generated by the application program for a resolution. The first and second requests are associated with communication between a camera and a computer. The instructions when executed cause the system to evaluate a bandwidth that is available for the communication between the camera and the computer; and the instructions when executed cause the system to comply with the first request and based on the evaluation of the available bandwidth, selectively not comply with the second request.

See discussion of independent claim 39 above. In particular, Thro fails to teach or even suggest instructions that cause a processor-based system to receive a first request that is generated by an application program for a frame rate and a second request that is generated by the application program for a resolution. More specifically, Thro merely teaches a "computer program" that determines a priority between a frame rate and a resolution. However, such a disclosure does not teach or even suggest the first and second requests of Fig. 1 or a program that

receives such requests. Thus, for at least this reason, withdrawal of the § 102 rejection of independent claim 45 is requested.

Claims 46-50 are patentable for at least the reason that these claims depend from an allowable claim. However, these claims are patentable for additional, independent reasons.

For example, claim 48 recites that the program storage device stores instructions to cause the system to determine the bandwidth by submitting communication requests for progressively larger bandwidths until the bus interface denies one of the communication requests.

See discussion of claim 42 above. Assuming, for purposes of argument, that denying a request based on a bandwidth constraint is well known, this recognition still does not teach or suggest all of the claim limitations. In other words, claim 48 specifically recites instructions that cause the system to determine the bandwidth by submitting communication requests for progressively larger bandwidths until the bus interface denies one of the communication requests. Therefore, for at least the reason that Thro fails to teach or suggest the additional limitations that are presented by claim 48, withdrawal of the § 103(a) rejection of this claim is requested. Additionally, Applicant challenges the Official Notice taken by the Examiner, as set forth above; and a *prima facie* case of obviousness has not been set forth for claim 48 for at least the additional, independent reason that the Examiner fails to show where the prior art contains the alleged suggestion or motivation to modify Thro to derive the claimed invention.

The article of independent claim 50 recites that the program storage device stores instructions to cause the system to adjust the resolution based at least in part on a determination of a scaling capability of a camera. See discussion of claim 44 above. In particular, merely recognizing that cameras have scaling capabilities neither teaches nor suggests the specific limitations of claim 50. Thus, claim 50 specifically sets forth that the system adjusts the resolution based on at least in part a determination of a scaling capability. Therefore, for at least the reason that the Examiner fails to show where the prior art teaches or suggests all limitations of claim 50 and also fails to show where the prior art contains the alleged suggestion or motivation to modify Thro to derive the claimed invention, a *prima facie* case of obviousness has not been set forth for this claim.

Thus, for at least the reasons that are set forth above, withdrawal of the §§ 102 and 103 rejections of claims 45-50 is requested.

§§ 102 and 103 Rejections of Claims 51-56:

The computer system of independent claim 51 includes a processor that receives in a driver program a first request that is generated by an application program for a frame rate and a second request that is generated by the application program for a resolution.

See discussion of independent claim 39 above. In particular, Thro neither teaches nor even suggests application and driver programs and their specific relationship, as set forth in independent claim 51. Furthermore, Thro fails to teach or even suggest the first and second requests that are specifically set forth in independent claim 51. Thus, for at least this reason, withdrawal of the § 102 rejection of claim 51 is requested.

Claims 52-56 are patentable for at least the reason that these claims depend from an allowable independent claim. Furthermore, dependent claims 52, 54 and 56 are patentable for the additional, independent reasons that are set forth above in the discussion of dependent claims 40, 42, 48, 44 and 50.

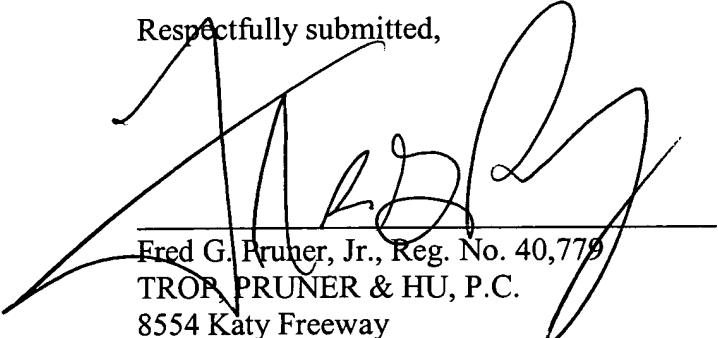
Therefore, for at least the reasons that are set forth above, withdrawal of the §§ 102 and 103 rejections of claims 51-56 is requested.

CONCLUSION

In view of the foregoing, withdrawal of the §§ 102 and 103 rejections and a favorable action in the form of a Notice of Allowance are requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0045US).

Respectfully submitted,

Date: May 3, 2005



Fred G. Pruner, Jr., Reg. No. 40,779  
TROP, PRUNER & HU, P.C.  
8554 Katy Freeway  
Houston, Texas 77024  
713/468-8880 [Phone]  
713/468-8883 [Fax]  
Attorney for Intel Corporation